

FILED

FEB 22 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RUSSELL C. JAY,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 05-72216

Tax Ct. No. 1743-05

MEMORANDUM^{*}

Appeal from a Decision of the
United States Tax Court

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Russell C. Jay appeals pro se from the Tax Court's decision dismissing for failure to state a claim his petition challenging the Commissioner of Internal Revenue's ("Commissioner") notice of deficiency for tax year 2002. We have jurisdiction pursuant to 26 U.S.C. § 7482. We review de novo a Tax Court's

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

dismissal for failure to state a claim, *Grimes v. Comm'r*, 806 F.2d 1451, 1453 (9th Cir. 1986) (per curiam), and we affirm.

The Tax Court properly dismissed Jay's petition for failure to state a claim because he did not set forth a clear and concise assignment of error or any facts demonstrating error in the Commissioner's determinations. *See* Tax Ct. R. 34(b)(4); *Grimes*, 806 F.2d at 1453-54. Moreover, the Tax Court ordered Jay to file an amended petition clearly setting forth the errors alleged, and he failed to do so, and also failed to appear at the hearing on the Commissioner's motion to dismiss.

Jay's remaining contentions are unpersuasive.

We deny the Commissioner's December 6, 2005, motion requesting sanctions in the amount of \$6,000 because the arguments raised in Jay's appeal, though unavailing, are not frivolous. *See Grimes*, 806 F.2d at 1454.

AFFIRMED